

DEBELL CLUBHOUSE CONCESSION AGREEMENT

This AGREEMENT, is made and entered into this 8th day of November 2007, by and between the CITY OF BURBANK, a municipal corporation, (hereinafter referred to as the "City"), and RAYMOND & MICHELE LUCERO, dba R & M CONCESSIONS, (hereinafter referred to as "Concessionaire").

I. DEFINITIONS:

For The purpose of this Agreement, the following words and phrases are defined and shall be construed as hereinafter set out:

CITY: City of Burbank

CONCESSION MANAGER: The Concessionaire.

DIRECTOR: The Parks, Recreation and Community Services Director of the City of Burbank or their authorized representative, acting as an agent of City.

II. CONCESSION GRANTED:

The City grants to the Concessionaire the right and privilege to operate the clubhouse food and beverage concession, and related services at the DeBell Municipal Golf Course Clubhouse, 1500 Walnut Avenue, Burbank. These rights shall be granted to the Concessionaire exclusively, and City shall not grant additional Concession agreements for the same purposes at DeBell Golf Course Clubhouse. The right to operate shall be limited to the above location and Concessionaire shall not operate on the premises any business not specified in the Concession Agreement. The right to operate the clubhouse concession shall commence upon completion of the construction of the new clubhouse.

III. CONCESSION PREMISES:

The concession shall be conducted within the golf clubhouse building at 1500 Walnut Avenue, Burbank, California, as shown on the upper level of the floor plan thereof attached hereto as Exhibit A, and related DeBell Golf Course Clubhouse areas as approved by the City. Concessionaire may use the Restaurant, Lounge, and Meeting Room after 5 p.m. daily. If the Concessionaire has been requested to provide service in the Meeting Room at any other time, he/she shall obtain the permission of the Director prior to the event. The group or persons scheduling the event shall be required to comply

with the Parks Permit process provided for in Article 8 of Chapter 5 of the Burbank Municipal Code.

The concession premises shall be used only and exclusively for concession purposes and such other purposes as are related thereto, provided express written approval therefore is granted by the Director and for no other purposes whatsoever.

Upon completion of the Clubhouse, Concessionaire shall personally inspect the concession premises and the surrounding area and evaluate the extent to which the physical condition of the premises will affect the concession. Unless the Concessionaire can demonstrate to the Director that any improvement is needed, Concessionaire shall accept the concession premises and agrees to make no demands upon the City for any improvements or alteration thereof. Upon termination of this Agreement, the premises shall be returned to the City in the same condition as received, except for normal wear and tear.

Concessionaire may make or construct or cause to be made or constructed additions, alterations, repairs or changes in the concession premises at Concessionaire's expense, provided written approval thereof is first obtained from the Director. Should the concession premises be substantially enlarged or improved, the City may of its option require a renegotiation of payment terms before Concessionaire shall be entitled to use such enlarged or improved facilities.

Concessionaire hereby acknowledges the title of City having jurisdiction in and to the concession premises and the improvements located thereon, and covenants and agrees never to assail, contest or resist said title. Any additions, alterations, repair or changes in the concession premises shall be surrendered with the concession premises unless demand for the removal thereof shall be given by the Director at least ninety (90) days prior to the date of termination. Should Concessionaire fail to remove said structures, buildings and improvements, same may be sold, removed or demolished, and Concessionaire shall reimburse City for any cost or expense in connection therewith in excess of any consideration received by City as a result of said sale, removal or demolition.

IV. OPERATING RESPONSIBILITIES:

1. SANITATION:

Concessionaire shall clean all food preparation equipment daily. Walls, ceilings, and floors shall be kept free of grease and dirt and shall be cleaned regularly. Windows shall be washed regularly. Carpet shall be vacuumed and shampooed as necessary. Counter tops and tables shall be kept clean and dry at all times.

Concessionaire will be responsible for maintaining the bath rooms except that the City shall provide once a day cleaning of all bath rooms.

No offensive matter or refuse or substance constituting an unnecessary, unreasonable or unlawful fire hazard, or material detrimental to the public health, shall be permitted or remain on the concession premises and within a distance of fifty (50) feet thereof, and Concessionaire shall prevent any accumulation thereof from occurring. Concessionaire shall see that all is collected as often as necessary, and in no case less than twice a week, and shall pay all charges which may be made for the removal thereof.

Concessionaire shall furnish all equipment and materials necessary, including trash receptacles of the size, type and number required by the Director to maintain the concession premises and the area within a distance of fifty (50) feet thereof in a sanitary condition. Concessionaire shall pay for all trash pick-up that exceeds twice a week.

Concessionaire will provide annual proof of compliance with state and local health and safety requirements.

2. DISORDERLY PERSONS:

Concessionaire shall use his best efforts to permit no intoxicated person or persons, profane or indecent language, or boisterous or loud conduct in or about the premises and will call upon the aid of peace officers to assist in maintaining peaceful conditions.

3. ILLEGAL ACTIVITIES:

Concessionaire shall not permit any illegal activities to be conducted upon the concession premises.

4. PERMITS AND LICENSES:

Concessionaire shall obtain at his sole expense any and all permits or licenses that may be required in connection with the operation of the concession including, but not limited to: tax permits business licenses, health permits, fire permits. Specifically, he shall be required to apply to and obtain from the Alcoholic Beverage Control Board an on-premise license for the sale of liquor, beer and wine.

5. TAXES:

Concessionaire shall pay all taxes on personal property and improvements located on said premises, the premises herein licensed, and all sales and other taxes, including but not limited to possessory interest tax levied against the operation of said business or other taxes assessed to him. By executing this agreement and accepting the benefits thereof, a property interest may be created known as a "possessory interest" and such property interest may be subject to property taxation. Concessionaire, as the party in whom the possessory interest is vested, may be subject to the payment of property taxes levied upon such interest.

6. SIGNS AND ADVERTISEMENTS:

No signs of any kind shall be displayed unless approved by the Director, who may require removal or refurbishment of any sign previously approved. Concessionaire shall not permit vendors to display wares inside or outside the building or on said property unless written permission is secured from the Director and such permission shall be subject to revocation at any time. In each separate facility licensed hereunder, a sign shall be posted in a prominent place, stating that the Concession is operated under a Concession Agreement issued by City.

7. NON-INTERFERENCE:

The Concessionaire, in the conduct of the concession and exercise of the privileges herein granted, shall not in any manner whatsoever interfere with the general use of the premises or surrounding public property for the purpose they provided, nor with the enjoyment thereof by the public.

8. HABITATION:

The concession premises shall not be used for human habitation, other than an approved night watchman or patrolman.

9. PERSONAL ATTENTION:

As defined in paragraph 1 above, the Concession Manager is the Concessionaire. The Concessionaire shall devote their full-time and attention to the operation of the concession and shall promote, increase and develop the business and render every possible service and convenience to the public.

Any vacation time for the Concessionaire must be approved by Director. Any person who is employed by the Concessionaire to act as Concession Manager

during the Concessionaire's vacation or any period of absence due to an emergency must meet the following requirements:

- A. Must have a minimum of five (5) years' experience within the last ten years in the operation of a food and beverage concession similar in scope to that found at the DeBell Golf Course Clubhouse and possess a Food Handler Certification from the County of Los Angeles.
- B. Must possess a competent past record of employment in the food service business as verified and supported by references, letters and other necessary evidence from all employers. The person selected as the Concession Manager and his qualifications shall be submitted to the Director for approval prior to the retention of his services.

If for reasons of ill health, incapacitation or death, the Concession Manager becomes incapable of performing each and all terms and provisions of the Concession Agreement, City may, at its discretion, suspend the Agreement and all terms and conditions contained therein until such time as Concessionaire provides a qualified manager acceptable to City.

10. PROGRAMMED EVENTS:

Concessionaire shall not promote or sponsor private or public events requiring the use of DeBell Golf Course unless authorized to do so by the Director.

However, this provision shall not prohibit Concessionaire from generally advertising or encouraging public use of DeBell Golf Course facilities.

11. CONCESSION STAFF:

The Concessionaire shall provide such employees as may be required to render good service and to promote, increase and develop the amount of food and beverage business at the DeBell Golf facility. Persons employed shall be satisfactory to the Director as to the personal conduct, honesty, courtesy, health, ability and personal appearance. There must be someone present on site at all times who possesses a Food Handler Certification from the County of Los Angeles.

Concessionaire agrees and obligates itself not to discriminate during the performing of the Agreement against any employee or applicant for employment

because of employee's or applicant's race, religion, natural origin, ancestry, sex, age or physical handicap.

12. DAYS AND HOURS OF OPERATION:

Hours of operation shall be posted on the premises. Concessionaire shall open and operate the Clubhouse food service Concession, including the Clubhouse, Pick-Up Window, and the Service Bar, each and every day of the year, excluding Christmas, no later than 6:00 a.m. The Pick-Up Window may be serviced via a bell so customers may ring for service. The Clubhouse food service Concession shall remain open on days that the Golf Course has closed because of weather conditions unless the Director agrees to close the Clubhouse.

The concession shall be open and operated throughout the day and shall be closed no sooner than thirty (30) minutes after dark. Concessionaire shall have the right at his own discretion to operate the concession at other times that may be allowed by law, subject to the approval of the Director, who may also require adjustments for the purpose of satisfying public demand for concession services.

Concessionaire shall also operate the beverage cart service on the golf course on Friday, Saturday, and Sunday from 10 AM to 6 PM and on Monday through Thursday from 10 AM to 5 PM or as determined by the Director. Director and Concessionaire shall determine what items shall be sold from the beverage cart with the Director having the final authority to decide upon the items that will be sold from the cart.

13. MERCHANDISE:

Concessionaire shall provide and maintain the necessary inventory of concession merchandise required to meet the needs of the public. Therefore, all merchandise sold or kept for sale by Concessionaire shall be first class in quality and shall conform to all federal, State and Municipal laws, ordinances and regulations in every respect. No limitations, adulterated, misbranded or impure articles shall be sold or kept for sale by Concessionaire, and all edible merchandise kept on hand shall be stored and handled with due regard for sanitation and health regulations. In addition, no substitutes, fillers, dilutants, nor reduction in size of standard manufactured or processed food products will be permitted. All merchandise kept for sale by the Concessionaire shall be kept subject to the approval or rejection of the Director and Concessionaire shall remove from the premises any article which may be rejected and shall not again offer it for sale without the consent of the

Director. The Director may order the improvement of the quality of any merchandise kept or offered for sale. Concessionaire shall minimize the paper items (straw covers, serving cartons, etc.) distributed with take-out concession products and shall not sell or give away or otherwise dispose of any unshelled peanuts or other commodity which in the opinion of the Director will cause undue litter.

14. PRICES:

Concessionaire shall at all times maintain a complete list or schedule of the prices charged for all goods or services, or combination thereof, supplied to the public on or from the Concession premises. If the Concessionaire wants to increase the price of any item he shall seek the prior approval of the Director. Said prices shall be fair and reasonable based upon the following considerations: that the concession is intended to serve the needs of the public for the goods and/or services supplied at a fair and reasonable cost; comparability with prices charged for similar goods and/or services supplied in the Los Angeles Metropolitan Area; and reasonableness of profit margin in view of the cost of providing same in compliance with the obligations assumed in this agreement.

The Concessionaire shall provide the City with an annual menu and price list to be presented within ten days of the agreement's anniversary date. In the event the Director notifies Concessionaire that prices being charged are not fair and reasonable, Concessionaire shall have the right to confer with the Director and justify said prices. Following reasonable conference and consultation thereon, Concessionaire shall make such price adjustments as may be ordered by the Director.

Upon request of the Director, the Concessionaire shall provide the City with a menu and price list for any tournament or other special event thirty days before the date of the tournament or special event. In the event the Director notifies Concessionaire that prices being charged are not fair and reasonable, Concessionaire shall have the right to confer with the Director and justify said prices. Following reasonable conference and consultation thereon, Concessionaire shall make such price adjustments as may be ordered by the Director.

15. FIXTURES, FURNISHINGS, AND EQUIPMENT:

Concessionaire shall provide and install all appliances, furniture, fixtures and equipment that are required for the proper operation of the Concession other than those provided by the City as listed in Exhibit B. Concessionaire shall be responsible for all television and radio cable or satellite costs.

If, upon termination of the Concession agreement, City does not renew the Concession agreement, the Concessionaire shall remove his equipment and furnishings, excluding improvements or those items which have been attached and therefore deemed to be part of the realty. Concessionaire shall be allowed a period of fourteen (14) days to make such removal; and if not removed within that period, said fixtures, furnishings, and equipment shall be and become the property of the City. The City may elect to keep same upon the premises or to sell, remove or demolish same. Concessionaire shall reimburse City for any cost incurred in excess of any consideration received from the sale, removal, or demolition thereof.

16. VENDING MACHINES:

Concessionaire shall first receive written approval from the Director before installing or permitting vending machines to be installed. The Director shall have the right to order removal of any and all vending machines upon thirty days notice in writing.

17. SECURITY DEVICES:

Concessionaire may provide any legal devices, installations, or equipment designed for the purpose of protecting the concession premises from theft, burglary or vandalism, provided written approval for installation is first obtained from the Director. All purchases, installations, and maintenance thereof shall be Concessionaire's expense.

18. MAINTENANCE OF EQUIPMENT:

Concessionaire shall provide all maintenance, repair, and service required on all equipment used in the concession whether Concessionaire or City owned, excluding air-conditioning and heating equipment, which shall be maintained by City.

Insofar as sanitation and appearance of the concession is involved, the Director may direct Concessionaire to perform necessary repairs and maintenance to Concessionaire or City owned equipment. In the event City owned equipment is in

use, the Director may prescribe in detail the type and frequency of maintenance and repair to be performed by Concessionaire.

19. MAINTENANCE OF PREMISES:

Concessionaire shall be responsible for maintenance and repair of all interior areas and surfaces of the subject premises. Common passageways leading to other facilities maintained by City which also lead to the licensed premises shall not be considered under the control of Concessionaire. Concessionaire's duties shall include all sweeping, washing, servicing, repairing, replacing, cleaning and interior painting that may be required to properly maintain the premises in a safe, clean, wholesome, sanitary, orderly and attractive condition. City shall be responsible for electrical, mechanical and plumbing maintenance in the interior of the premises, such as light fixtures, toilet and faucets. However, City shall be responsible for maintenance of utility lines within the walls of the licensed premises. City shall maintain the exterior of all buildings and will endeavor to perform all exterior repairs occasioned by normal wear and tear, vandalism, and the elements.

Concessionaire shall be responsible for clean-up of the Restaurant, Lounge Area, and Meeting Room whenever any of those areas has been used by Concessionaire or whenever Concessionaire has provided service to any group or person using that area.

The Director may direct that certain maintenance or repairs be performed where such work is necessary to protect the premises or to provide clean, attractive and well-maintained premises.

20. UTILITIES (TELEPHONE):

The City shall pay all charges for fuel, gas, electricity, and water necessary to carry on the operations of the Concessionaire. The Concessionaire shall provide and pay for telephone service. The telephone number shall be placed in the name of the concession and shall not be transferred to any other location. Concessionaire waives any and all claims against City for compensation for loss or damage caused by a defect, deficiency or impairment of any utility system, water system, water supply system, drainage system, waste system, heating or gas system, electrical apparatus or wires serving the concession premises.

21. **SAFETY:**

Concessionaire shall immediately correct any unsafe condition of the concession premises, as well as any unsafe practices occurring thereon. Concessionaire shall obtain emergency medical care for any member of the public who is in need thereof, because of illness or injury occurring on the concession premises. Concessionaire shall cooperate fully with City in the investigation of any accidental injury or death occurring on the concession premises, including a prompt report thereof to the Director.

V. **TERM:**

The term of the AGREEMENT shall be for a period of five (5) years, commencing on the first day of operation after completion of the new clubhouse. After one year of operation the Greens Committee and the Park, Recreation and Community Services Board shall review Concessionaire's performance of the goals attached as Exhibit C to this Agreement. Failure to achieve satisfactorily performance of the goals shall be considered a default subject to the provisions of Section X of this Agreement. After the first year of operation the Greens Committee and the Park, Recreation and Community Services Board shall annually review the Concessionaire's proposed future goals and determine if they are adequate or if additional future goals are necessary. This agreement may be renewed for an additional five (5) years as provided for in Burbank Municipal Code Section 9-113(f). If the Concessionaire wishes to commence negotiations for an additional five year term, they shall notify the City in writing no later than one year prior to the expiration of the Agreement. Any extension of the term of this Agreement shall be made only after an extensive customer satisfaction survey has been conducted by City staff, and its results have been favorable concerning all services provided by the Concessionaire. If negotiations with the Concessionaire or any other provider are in progress at the end of the five-year term previously agreed upon, the City and the Concessionaire shall continue performance as required herein on a month-to-month basis until such time as a new Concessionaire has commenced operation of the clubhouse concession or the City and Concessionaire have renewed this Agreement.

VI. **PAYMENT:**

By the fifteenth day of each month, Concessionaire agrees to pay to City each month as consideration for the grant of said concession privileges percentages of the past month's receipts as indicated below in the specified categories:

10% of past monthly gross receipts from all food and refreshment sales, including sales from the Beverage and Refreshment Cart.

12% of past monthly gross receipts received from liquor sales including beer and wine, including sales from the Beverage and Refreshment Cart.

50% of all vending machine net revenue to Concessionaire.

3% of past monthly gross receipts derived from food, refreshment, liquor, beer, wine, and vending machine sales. This will be a Capital Improvement fund designed to help offset the City's investment in kitchen, dining room, and general improvements. The Director shall perform an annual review of the premises to determine what improvements may be needed and if there are sufficient monies in the fund to provide for them.

In addition, Concessionaire shall pay one half of the monthly rental cost of the Beverage and Refreshment Cart for the remaining time of the lease of the cart.

Concessionaire shall pay to City a minimum of \$2,500 per month in the event the above past monthly payments total less than said minimum. The term gross receipts is defined to mean the total amount of all sales of food, refreshments, liquor, beer, wine and the total amount received for the performance of any act of service (whether or not such act of service is done as a part of or in connection with the sale of food, refreshments, liquor, beer, wine, goods, wares, or merchandise), for which a charge is made or credit is allowed, including all receipts, cash credits, and property of any kind or nature. However, gross receipts does not include that amount of cash discounts allowed or taken on sales, nor that amount of any sales or use tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser by Concessionaire. In the case of vending machines owned by the Concessionaire, net revenue is defined to mean the total amount of revenue taken from the vending machines less product cost, sales and excise taxes. In the case of vending machines not owned by the Concessionaire, net revenue is defined to mean the total amount of revenue received by the Concessionaire from vending machine sales less sales and excise taxes.

When the Director and Concessionaire find that a percentage of gross receipts is not suitable or applicable for a particular activity not otherwise provided for herein, the Director may establish a minimum monthly amount as payment for the privilege of engaging therein. Said amount shall be set by mutual written consent of the Director and Concessionaire and shall be reasonable in accordance with the revenue to be generated from such activity.

VII. BUSINESS RECORDS:

Concessionaire shall be required to maintain a method of accounting of all the receipts and disbursements in connection with the subject concession which shall correctly and accurately show the gross receipts and disbursements received or made by Concessionaire from the operation of said concession. The method of accounting, including bank accounts, established for the subject concession shall be separate from the accounting system used for any other business operated by Concessionaire or for recording Concessionaire's personal financial affairs. Such method shall include the keeping of the following documents:

1. Regular books of accounting such as general ledgers.
2. Journals including any supporting and underlying documents such as vouchers, checks, tickers, bank statements, etc.
3. State and Federal income tax returns and sale tax returns and checks and other documents proving payment of sums shown.
4. Cash register tapes shall be retained so that day-to-day sales can be identified.
5. Any other accounting records that City, in its sole discretion, deems necessary for proper reporting of receipts.

Concessionaire shall obtain and install a cash register(s) on which he shall record all gross sales. The cash register shall be non-resettable and sufficient to supply an accurate recording of all sales on tape. Concessionaire shall not purchase or install the cash register before obtaining the Director's approval of the specific register to be purchased. All cash registers shall have a sales counter which is visible to the public.

All documents, books and accounting records shall be open for inspection and reinspection at any reasonable time during the term of this agreement and for twelve (12) months thereafter. In addition, the City, may from time to time conduct an audit and re-audit of the books and business conducted by Concessionaire and observe the operation of the business so that accuracy of the above records can be confirmed. If the report of gross sales made by Concessionaire to the City should be found to be less than the amount of gross sales disclosed by such audit and observation, Concessionaire shall pay the delinquent amount within thirty (30) days of billing therefore. If the additional amount due exceeds two percent (2%), and there is no reasonable basis for the failure to report and pay thereon, Concessionaire shall also pay the cost of the audit. All information obtained in connection with the City's inspection of records or audit shall be treated as

confidential information and exempt from public disclosure thereof, except as otherwise required or authorized by applicable State or Federal laws.

Concessionaire shall furnish the City with a monthly gross receipts report showing the amount payable therefrom to the City. Such a report shall accompany each monthly payment required to be made as provided herein. The monthly reporting period shall be by calendar month, rather than monthly anniversary date of the effective date of the concession agreement. In addition thereto, Concessionaire shall furnish the City with an annual reviewed financial statement (which shall include an income statement, balance sheet and notes to the financial statements) prepared by a Certified Public Accountant and in a form acceptable to the City. The annual financial statements shall be submitted within sixty (60) days of the close of an agreement year or in a time frame agreed to by the City. The City reserves the right to request revenue statements or certified audit statements.

VIII. LIABILITY:

1. HOLD HARMLESS:

The Concessionaire agrees to defend, indemnify and hold the City, its officers, agents and employees, free and harmless from every claim, demand, damage or action, and any cost or expense in connection therewith, that may arise in any manner out of the operation of said concession and the properties, equipment and facilities utilized in connection therewith.

The Concessionaire hereby expressly waives any and all claims for compensation for any and all loss or damage sustained by reason of any defect, deficiency or impairment of the water supply system, drainage or heating systems, gas mains, electrical apparatus or wiring furnished for the premises covered by this Agreement which may occur from time to time from any cause or for any loss resulting from fire, earthquake, flood, storms, war, insurrection, riot, public disorder or casualty; or from construction and/or maintenance activities authorized by the City; and the Concessionaire hereby expressly releases and discharges the City and its officers, agents and employees from any and all demands, claims, actions and causes of action arising from any of the aforesaid causes.

Further, Concessionaire waives and releases the City from any liability for any damages including but not limited to business loss or interruption which may occur as a result of any capital improvements, maintenance, or repairs to either the clubhouse premises as shown on Exhibit A or to the DeBell Golf Course. Concessionaire agrees to defend, indemnify and hold the City, its officers, agents

and employees, free and harmless from every claim, demand, damage or action, and any cost or expense that may result from capital improvements, maintenance, or repairs to either the clubhouse premises as shown on Exhibit A or the DeBell Golf Course.

2. **INSURANCE:**

- A. Mandatory Insurance: Concessionaire shall maintain the following insurance coverage throughout the term of this Agreement, and upon request Concessionaire shall show City evidence of such coverage:
- B. Automobile Insurance: If Concessionaire uses, or intends to use a personal automobile in the performance of this Agreement, automobile liability insurance with limits of not less than \$100,000.00 per person and \$300,000.00 per accident for bodily injury and not less than \$25,000.00 per accident for property damage.
- C. Workers' Compensation Insurance: Workers' Compensation Insurance and Employer's Liability Insurance on any employees of Concessionaire performing services under this Agreement.
- D. General Liability and Property Damage Insurance: Concessionaire shall maintain general liability insurance and property damage insurance in the amount of \$1,000,000.00 combined single limit. The City shall be named as an additional insured on a separate endorsement to the insurance policy subject to the review and approval of the City Attorney. The endorsement shall require the insurance company to provide City a minimum of ten (10) days notice of the cancellation of the policy. The policy shall cover all operations of Concessionaire pursuant to the terms of this Agreement. The policy shall specify that such insurance is the primary insurance. The policy shall be issued by an insurance company that is admitted to business in the State of California.
- E. Recovery from Concessionaire's Insurance: Concessionaire agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, the Concessionaire shall look solely to its insurance for recovery.
- F. Self-Insured Retention: The insurance policies acquired by Concessionaire shall not require payment of any self-insured retention by Concessionaire as a condition precedent to the City's

coverage or payment for loss otherwise covered under the required liability insurance herein.

- G. Additional Insured: The naming of the City as additional insured shall not affect any recovery to which the City would be entitled under this policy if not named as an additional insured and the City shall not be held liable for any premium or expense of any nature on this policy or any extension thereof. Any other insurance held by the City shall not be required to contribute toward any loss or expense covered by the insurance provided by this policy. Proceeds from any policy or policies shall be payable to the City primarily, and to the Concessionaire secondarily, if necessary.
- H. Evidence of Insurance: Concessionaire shall furnish Certificates of Insurance evidencing the required coverages or the original of the insurance policies for review by the Director and approved by the City Attorney's office no less than thirty (30) days prior to beginning performance under this Agreement.

3. DAMAGE AND THEFT:

The Concessionaire may insure the equipment, materials and work to cover Concessionaire's interest in the same from time to time as required. The City will not, under any circumstances, be answerable or accountable for any loss or damage that may happen to said equipment, materials and work, or any part or parts thereof, used and employed in fully executing the terms of the Concession Agreement.

4. BLANKET INSURANCE POLICIES:

Blanket insurance policies carried by the Concessionaire may be substituted for specific policies upon approval by the City.

IX. FAITHFUL PERFORMANCE BOND:

Concessionaire shall provide a Faithful Performance Bond in the amount of \$20,000 within ten (10) calendar days after written notification of the award of the concession has been mailed by City. The Bond shall be issued by a surety admitted to do business in the State of California and shall be subject to the review and approval of the City Attorney. The City shall not execute the Concession Agreement and Concessionaire may not begin operations on the licensed premises until said bond has been received and

approved. In the event the Concessionaire defaults in the performance of any of the terms of the Concession agreement, the sum guaranteed by said bond shall be available to reimburse City for any costs, as determined by the Director, occasioned by reason of said default. The form of said bond shall be such that City may proceed against Concessionaire and Concessionaire's surety immediately upon any default in the performance of the Concession Agreement. A Certificate of Deposit in a form acceptable to the City Attorney may be substituted for the bond.

X. DEFAULT:

In the event Concessionaire defaults in the performance of any of the terms or conditions of the Concession Agreement, or fails to conform to the rules and regulations, or any of the directions or instructions that may be properly made by City in the exercise of its powers, or fails, neglects or refuses to pay the consideration of any part thereof within 30 days after the same shall become due, or becomes unable through personal incapacity to fulfill his obligations under the License Agreement, or defaults in the performance of any of the other terms or provisions therein required, City shall have the following options without any further notice or authorization from Concessionaire, and its choice of any option shall in no way waive its rights to select any other option at any time:

1. City may give Concessionaire notice of such default. If the Concessionaire does not cure said default within 30 days after it was first discovered (forthwith for a default involving sanitary conditions) or make reasonable progress to cure said default, City may terminate the Concession agreement, assume the operation of the concession, and exclude Concessionaire from the premises; and/or,
2. City may retain any of Concessionaire's money in its possession and any of Concessionaire's property on the premises and apply same to the payment of any and all claims which may be due City, and/or,
3. City may recover at law any and all claims which may be due City; and/or,
4. City may perform such work as it deems necessary to cure said default and charge Concessionaire for the full cost of labor and materials expended, plus 45 percent of said cost for administrative overhead. The Director may exercise this option immediately in the event of a default involving abandonment (Item XII), cleanliness provisions (item IV-1), or safety provisions (Item IV-21). The Director may exercise this option within 10 days after giving Concessionaire written notice of a default involving

equipment maintenance provisions (Item IV-18) or premises maintenance provisions (Item IV-19).

5. City may recover damages from forfeited amounts of the Concessionaire's Faithful Performance Bond.

The acceptance of all or part of a rental payment by City for any period after a default shall not be deemed a waiver of any of these options, or a waiver of the default of any subsequent default of the same or any other term, covenant and condition. Any waiver by City of a default on the part of the Concessionaire shall not be construed as, or constitute a waiver of, any subsequent default of the same or any other term, covenant and condition.

In the event City defaults in the performance of any of the terms or conditions of the Concession Agreement, and if a written notice of such default is issued to City by Concessionaire by registered mail, and if City does not cure said default within thirty (30) days of receipt of said notice, then Concessionaire may immediately terminate the Concession Agreement, and recover at law any and all claims which may be due. However, if Concessionaire fails to notify City of its default within sixty (60) days after learning of its occurrence, then Concessionaire has automatically waived any and all of his rights occurring hereunder.

XI. REGULATIONS, INSPECTION, AND DIRECTIVES:

1. DEPARTMENT RULES

Concessionaire and concession employees shall at all Times abide by all rules and regulations heretofore adopted or that may hereafter be adopted by the Director and cooperate fully with Park and Recreation Department employees and agents in the performance of their duties. The Director is specifically designated a City agent and is employed by City to conduct inspections of the concession premises, evaluate Concessionaire and inform the Director fully as to Concessionaire's conduct of the concession.

2. LAWS AND ORDINANCES

Concessionaire shall conduct his business in accordance with all laws, ordinances, rules and regulations applicable to such business as set forth by the City, County, State and the Federal Governments. In the event any charges or complaints are filed against the Concessionaire alleging any violation of any of the foregoing, Concessionaire shall immediately notify City.

3. PERMISSIONS

Any permission required by the Concession agreement shall be secured in writing by Concessionaire from the Director and any errors or omissions in such permission shall not relieve Concessionaire of his obligations to faithfully perform the conditions therein. Concessionaire shall immediately comply with any written request or order submitted to him by the Director.

4. RIGHT OF INSPECTION:

The Director shall have the right to enter upon the concession premises at any and all reasonable times for the purpose of inspection and observation of Concessionaire operations. During these inspections, they shall have the right to utilize photographic devices and other instruments for recording conditions and events taking place upon licensed premises. Said inspections may be made by persons identified to Concessionaire as City employees, or may be made by independent contractors engaged by City. Inspections may be made for the purposes set forth below: however, the enumerations below shall not be construed to limit City's right of inspection for any purpose incidental to the rights of City:

- A. To determine if the terms and conditions of the Concession Agreement are being complied with.
- B. To observe transactions between Concessionaire and patrons in order to evaluate the quality and quantities of foods or drinks or other items sold or dispensed, the courtesy extended to and method of dealing with the public, the performance and caliber of Concessionaire's employees, and the methods for recording receipts.

The information gathered on these inspections will be used to evaluate Concessionaire in order to provide a basis for an action by City for the renewal or denial of renewal of concession.

5. CONTROL OF PREMISES:

City shall have absolute and full control of the building and all its appurtenances during the term of the Concession Agreement and may make such changes and alterations therein, and in the grounds surrounding same, as may be determined by said City.

6. NAME OF CONCESSION:

The name of the concession, as it appears in the Concession Agreement for the subject concession shall not be used by Concessionaire in conjunction with any other business venture during or after the term of the Concession Agreement. The Concessionaire and the City may, by mutual agreement, change the name of the concession.

7. MONTHLY MEETINGS:

The Director, the Concessionaire, and the Golf Pro shall hold monthly meetings at a time and place to be determined by the Director. These meetings will be used to discuss matters of common concern between the parties, coordinate tournament activities, and other issues important to the operation of the concession.

XII. ABANDONMENT OF CONCESSION OPERATIONS:

In the event of an abandonment, vacation or discontinuance of concession operations for a period in excess of forty-eight (48) hours, Concessionaire hereby irrevocably appoints City as an agent for continuing operation of the concession granted herein, and in connection therewith authorizes the officers and employees thereof to (1) take possession of the concession premises, including all improvements, equipment and inventory thereon; (2) remove any and all persons or property on said premises and place any such property in storage for the account of and at the expense of Concessionaire; (3) sublease or license the premises; and (4) after payment of all expenses of such subleasing or licensing apply all payments realized therefrom to the satisfaction and/or mitigation of all damages and arising from Concessionaire's breach of this agreement. Entry by the officers and employees of City upon the concession premises for the purpose of exercising the authority conferred upon as agent of Concessionaire shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this concession.

XIII. SURRENDER:

Upon the termination of this Agreement the Concessionaire shall surrender said premises, together with all fixtures, furnishings and equipment attached thereto, in good condition and repair and free and clear of all liens and encumbrances.

XIV. ASSIGNMENT, SUBLEASE, BANKRUPTCY:

Concessionaire shall not, without the prior written consent of the Director assign, hypothecate, or mortgage this agreement or sublease or license any portion of the concession premises. Any attempted assignment, hypothecation, mortgage, sublease or license without said written consent of me Director shall render this agreement null and void.

Each and all of the provisions, agreements, terms, covenants and conditions herein contained to be performed by Concessionaire shall be binding upon any transferee thereof.

The Concession shall not be transferable by testamentary disposition or the State laws of intestate succession, as the rights, privileges and use conferred by this agreement shall terminate prior to the date for expiration thereof in the event of the death of Concessionaire occurring within the term herein provided. Additionally, neither this agreement nor any interest therein shall be transferable in proceedings in attachment or execution against Concessionaire, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Concessionaire, or by any process of law including proceedings under Chapter XI, XII or XIII of the Bankruptcy Act.

Shareholders and/or partners of Concessionaire may transfer, sell, Exchange, assign or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment or divestment is effected in such a way as to give majority control of Concessionaire to any person, corporation, partnership or legal entity other than the majority controlling interest therein at the time of the execution of this agreement, approval thereof shall be required. Consent to any such transfer shall only be refused if the Director finds that the transferee is lacking in experience and/or financial ability to conduct the concession.

The prohibition herein contained shall not be applicable with respect to transfers of this agreement arising from the exercise of a power of sale or judicial foreclosure pursuant to the terms and conditions of a hypothecation or mortgage previously approved by the Director.

XV. NOTICES:

Any notice required to be given under the terms of this concession agreement or any law applicable thereto may be placed in a sealed envelope, with postage paid, addressed to the person on whom it is to be served, and deposited in a post office, mailbox, sub-post office, substation or mail chute, or other like facility regularly maintained

by the United States Postal Service. The address to be used for any notice served by mail upon:

THE CONCESSIONAIRE:
Raymond and Michele Lucero
dba R&M Concessions, Inc.
1500 Walnut
Burbank, CA

or such other place as may hereinafter be designated in writing to the Director by Concessionaire.

Any notice served by mail upon City shall be addressed to:

THE CITY:
City Clerk
P.O. Box 6459
Burbank, California 91510

or such other place as may hereinafter be designated in writing to Concessionaire by the Director with copies thereof to:

COPIES TO:
Park, Recreation and Community Services Director
P.O. Box 6459
Burbank, California 91510

Service by mail shall be deemed complete upon deposit in the above-mentioned manner.

XVI. ENTIRE AGREEMENT:

This document, and the exhibit attached hereto, constitutes the entire agreement between the City and Concessionaire for the concession and use granted herein. All other agreements, promises and representations with respect thereto, other than contained herein, are expressly revoked, as it has been the intention of the parties to provide for a complete integration within the provisions of this document, and the exhibit attached hereto, the terms, conditions, promises and covenants relating to the concession and the premises to be used in the conduct thereof. The unenforceability, invalidity, or illegality of any provision of this agreement shall not render the other provisions thereof unenforceable, invalid or illegal.

This document may be modified only by further written agreement between the parties hereto. Any such modification shall not be effective unless and until executed by Concessionaire and in the case of City until approved by the City Council and executed by the Parks, Recreation, and Community Services Director.

IN WITNESS WHEREOF, three (3) copies of this Agreement have been executed by the parties hereto, each of which shall, for all purposes, be deemed an original.

"CITY"

CITY OF BURBANK, a municipal corporation,

By: 

Eric Hansen

Park, Recreation, and Community Services Director

"CONCESSIONAIRE"

RAYMOND & MICHELE LUCERO
dba R & M CONCESSIONS

By: 

Raymond Lucero

By: 

Michele Lucero

APPROVED AS TO FORM:

City Attorney's Office

By: 

Terry B. Stevenson

Senior Assistant City Attorney

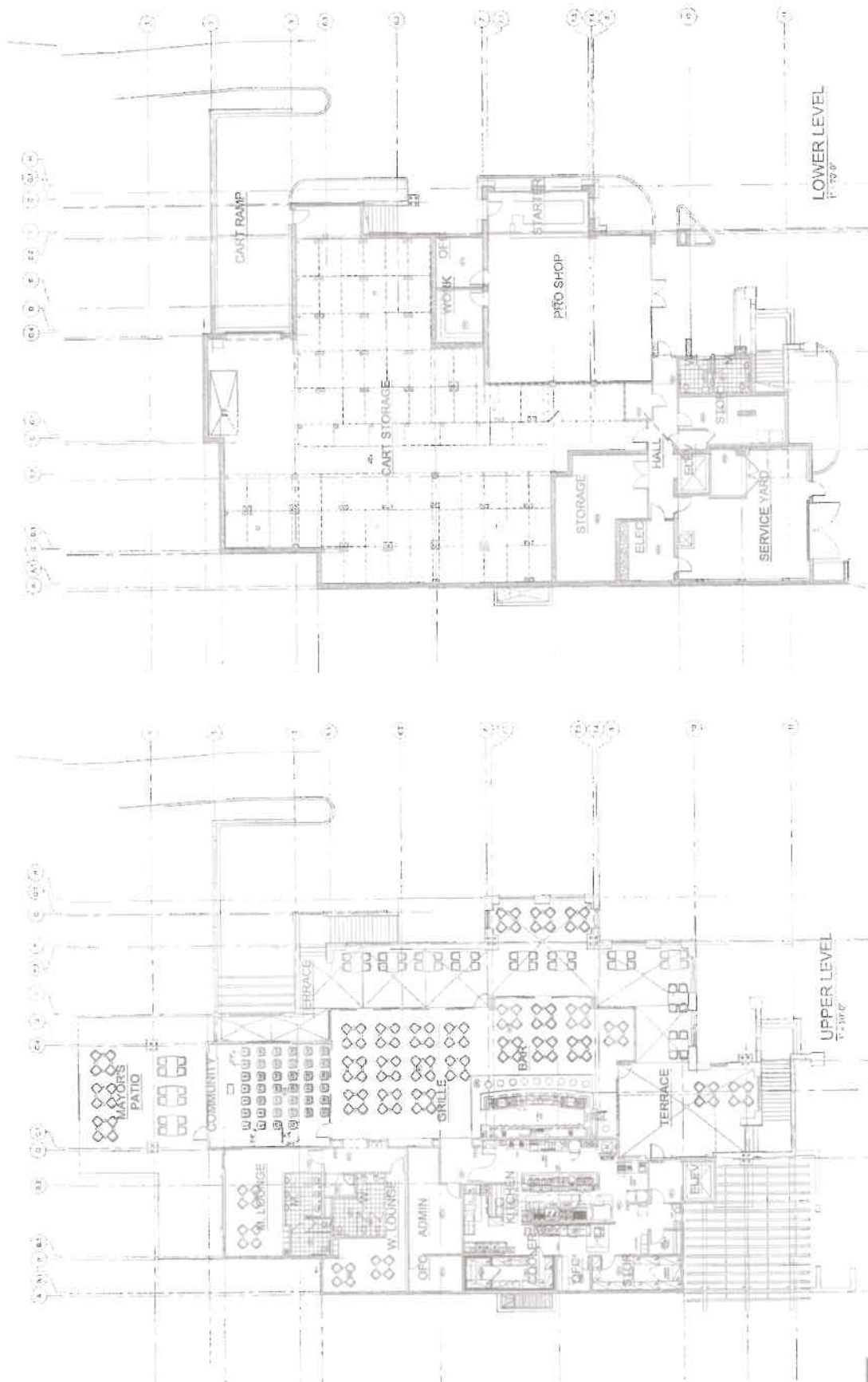
ATTEST

Exhibit 11-8-07



City Clerk

City of Burbank, California



FLOOR PLANS

DEBELLE GOLF CLUBHOUSE
 1500 WALNUT AVE
 BURBANK, CA 91501

JUNE 12, 2007

Melton Decker & Butler Architects, Inc.
 18207 McQuinn, A
 Irvine, CA 92614
 (949) 474-8188



EXHIBIT. A

Fixtures, Furniture, and Equipment

1. Artwork Purchasing and Installation
2. Fixed Lighting fixtures
3. Kitchen / Bar equipment
4. Audio system
5. Code signage
6. Plumbing fixtures, including emergency eyewash
7. Window coverings
8. Pro shop fixtures
9. Day Lockers
10. Kitchen and bar appliances
11. Trophy case
12. Audio system (public announce, music) incl conduit by GC
13. Point of sales locations per operator (conduit by GC)
14. Beverage lines conduit / sleeving
15. Security system*
16. Telephone system*
17. Data system*
18. CATV system*
20. Furniture Purchasing and Installation
21. Televisions (except Golf Shop – by OP)
22. Trash Dumpsters
23. Indoor plants and urns
24. Dedication plaque
25. Janitorial supplies

* requires utility and conduit coordination between Owner, Operator, and Vendor.

EXHIBIT B

Food Concession Goals

- I. The Concessionaire will develop a detailed marketing plan which will be presented to City staff, the Greens Committee and the Park, Recreation and Community Services Board for approval. It will address the following:
 1. Promotion of all services including restaurant, community room, beverage cart and snack bar
 2. Developing a new menu to better meet the service requirements of an enhanced restaurant facility
 3. Develop a plan to expand the use of the community room for community organizations
 4. Develop promotional material to be distributed by mail, internet, or handed out
 5. Work with Golf Professional to expand DeBell website to include specific information concerning restaurant concession operation
 6. Develop promotional opportunities to expand services during historically slow operation periods

- II. The Concessionaire will develop customer service evaluation tools to address the following:
 - i. Golf Club functions
 - ii. Tournaments
 - iii. Community Groups
 - iv. Special Events
 - v. Day to Day clients
 - vi. Conduct an annual market survey to compare pricing competitions to comparable facilities
 - vii. Concession will provide an annual staffing level review to be filed with the Director. It will assure that appropriate staffing levels are met, as well as the required certifications

- III. Concession will develop a Health, Safety and Maintenance program. It will include the following:
 1. Concessionaire will provide training of food service staff on a regular basis
 2. Concessionaire will ensure that at least one food handler certified by Los Angeles County is on site during the hours that the kitchen is in operation. It is desirable that all staff who handle food are certified by Los Angeles County.
 3. Concessionaire is obligated to maintain a Los Angeles County Health Department "A" rating at all times. Any deviation from this rating will be reported to the Director immediately and a corrective action plan developed and implemented.
 4. Concessionaire will develop a facility inspection check list which will be completed and filed with the Director on a monthly basis

EXHIBIT C

INTERIM CONCESSION AGREEMENT

This AGREEMENT, made and entered into this 8th day of November 2007, by and between the CITY OF BURBANK, a municipal corporation, (hereinafter referred to as the "City") and Raymond & Michele Lucero, dba R & M Concessions, Inc., (hereinafter referred to as "Concessionaire").

I. DEFINITIONS:

For the purpose of this Agreement, the following words and phrases are defined and shall be construed as hereinafter set out:

CITY:	City of Burbank
CONCESSION MANAGER:	The person(s) designated (on-site) to manage the Catering Truck and Beverage Cart and make decisions for the Concessionaire.
PARKS, RECREATION AND COMMUNITY DIRECTOR ("Director"):	The Parks, Recreation and Community Services Director for the City of Burbank or authorized representative, acting as an agent of the City.
GROSS RECEIPTS:	The total amount of all sales of food and refreshments and the total amount received for the performance of any act of service (whether or not such act of service is done as a part of or in connection with the sale of food and refreshments, goods, wares, or merchandise), for which a charge is made or credit is allowed, including all receipts, cash credits, and property of any kind or nature

II CONCESSION GRANTED:

The City grants to the Concessionaire the right and privilege to operate a Catering Truck, Beverage Cart, and related services at the DeBell Golf Course, 1500 Walnut Ave., Burbank. These rights shall be granted to the Concessionaire exclusively, and the City shall not grant additional Concession agreements for the same purposes at the DeBell Golf Course. The right to operate shall be limited to the above location and Concessionaire shall not operate on the premises any business not specified in the Concession Agreement.

III. CONCESSION PREMISES:

The concession shall be conducted in the parking lot at the DeBell Golf Course, 1500 Walnut Ave., Burbank, in the area as shown on Exhibit A, attached to this agreement.

The concession premises shall be used only and exclusively for concession purposes and such other purposes as are related thereto, provided express written approval therefore is granted by the Director and for no other purposes whatsoever.

Concessionaire acknowledges personal inspection of the concession premises and the surrounding area and evaluation of the extent to which the physical condition thereof will affect the concession. Concessionaire accepts the concession premises in their present physical condition, and agrees to make no demands upon the City of any improvements or alteration thereof. Concessionaire agrees to commence beverage and other related services effective the September 1, 2007 or whenever the DeBell Clubhouse is demolished, whichever occurs later.

Concessionaire shall not make or construct or cause to be made or constructed additions, alterations, repairs or changes in the concession premises.

IV. OPERATING RESPONSIBILITIES:

A. SANITATION:

Concessionaire shall clean all equipment daily.

No offensive matter or refuse or substance constituting an unnecessary, unreasonable or unlawful fire hazard, or material detrimental to the public health, shall be permitted or remain on the concession premises and within a distance of fifty (50) feet thereof, and Concessionaire shall prevent any accumulation thereof from occurring. Concessionaire shall see that all refuse is collected as often as necessary, and dispose of refuse in container designated by the Parks, Recreation and Community Services representative.

Concessionaire shall furnish all equipment and materials necessary, including trash receptacles of the size, type and number required by the Director to maintain the concession premises and the area within a distance of fifty (50) feet thereof in a sanitary condition. The City, in their discretion, may have the area sprayed for pest and/or pressure washed by City Contractors.

Concessionaire will provide annual proof of compliance with State and Local health and safety requirements. **City reserves the right to terminate this agreement on 24 hours notice if State and Local health and safety requirements are not maintained and the concession is ordered closed by any agency having jurisdiction to do so.**

B. ILLEGAL ACTIVITIES:

Concessionaire shall not permit any illegal activities to be conducted upon the concession premises.

C. PERMITS AND LICENSES:

Concessionaire shall obtain at its sole expense any and all permits or licenses that may be required in connection with the operation of the concession including, but not limited to: tax permits, business licenses, health permits, and fire permits.

D. TAXES:

Concessionaire shall pay all taxes on personal property and improvements located on said premises, the premises herein licenses, and all sales and other taxes, including but not limited to possessory interest tax levied against the operation of said business or other taxes assessed to him. By executing this agreement and accepting the benefits thereof, a property interest may be created known as a "possessory interest" and such property interest may be subject to property taxation. Concessionaire, as the party in whom the possessory interest is vested, may be subject to the payment of property taxes levied upon such interest.

E. SIGNS AND ADVERTISEMENTS:

No signs of any kind shall be displayed unless approved by the Director, who may require removal or refurbishment of any sign previously approved. Concessionaire shall not permit vendors to display wares at the concession premises unless written permission is secured from the Director and such permission shall be subject to revocation at any time.

F. NON-INTERFERENCE:

The Concessionaire, in the conduct of the concession and exercise of the privileges herein granted, shall not in any manner whatsoever interfere with the general use of the premises or surrounding public property for the purpose they provide, nor with the enjoyment thereof by the public.

G. PERSONAL ATTENTION:

As defined in paragraph I above, the Concession Manager is the person(s) designated (on-site) to manage the Catering Truck and Beverage Cart and make decisions for the Concessionaire. The Concessionaire shall devote that person their full-time and attention to the operation of the concession and shall promote, increase and develop the business and render every possible service and convenience to the public.

Any vacation time for the Concession Manager Concessionaire must be approved by the Director. Any person who is employed by the Concessionaire to act as Concession Manager during the Concessionaire's vacation or any period of absence due to an emergency must possess a competent past record of employment in the coffee service business as verified and supported by references, letters and other necessary evidence from all employers. The person selected as the Concession Manager and their qualifications shall be submitted to the Director for approval prior to the retention of his services, including during vacation or any period of absence due to an emergency.

If, for reasons of ill health, incapacitation or death, the Concessionaire becomes incapable of performing each and all terms and provisions of the Concession Agreement, the City may, at its discretion, suspend the Agreement and all terms and conditions contained therein until such time as Concessionaire provides a qualified manager acceptable to the City.

H. PROGRAMMED EVENTS:

Concessionaire shall not promote or sponsor private or public events requiring the use of the DeBell Golf Course unless authorized to do so by the Director.

However, this provision shall not prohibit Concessionaire from generally advertising or encouraging public use of its facilities.

I. CONCESSION STAFF:

The Concessionaire shall provide such employees as may be required to render good service and to promote, increase and develop the amount of food and beverage and food business at the DeBell Golf Course. Persons employed shall be satisfactory to the Director as to the personal conduct, honesty, courtesy, health, ability and personal appearance.

Concessionaire agrees and obligates itself not to discriminate during the performing of the Agreement against any employee or applicant for employment because of employee's or applicant's race, religion, natural origin, ancestry, sex, age or physical handicap.

Concessionaire agrees to provide Director with a list of employees who work the Catering Truck and update it as necessary.

J. DAYS AND HOURS OF OPERATION:

Concessionaire shall open and operate the Catering Truck and the Beverage and Refresher Cart ("Cart") each and every day of the year, excluding Christmas, no later than 6:00 am. The Catering Truck and Cart may close on days of inclement weather conditions if approved by the Director.

The Catering Truck shall be open at 6 AM and close at dark. The Cart shall be in operation Monday through Sunday from 10 AM to dark or as determined by the Director. Concessionaire shall have the right at his own discretion to operate the concession at other times that may be allowed by law, subject to the approval of the Director, who may also require adjustments for the purpose of satisfying public demand for concession services.

K. MERCHANDISE:

Concessionaire shall provide and maintain the necessary inventory of concession merchandise required to meet the needs of the public. Therefore, all merchandise sold or kept for sale by Concessionaire shall be first class in quality and shall conform to all Federal, State and Municipal laws, ordinances and regulations in every respect. No limitations, adulterated, misbranded, or impure articles shall be sold or kept for sale by Concessionaire, and all edible merchandise kept on hand shall be stored and handled with due regard for sanitation and health regulations. In addition, no substitutes, fillers, dilutants, nor reduction in size of standard manufactured or processed food products will be permitted. All merchandise kept for sale by the Concessionaire shall be kept subject to the approval or rejection of the Director, and the Concessionaire shall remove from the premises any article which may be rejected and shall not again offer it for sale without consent of the Director. The Director may order the improvement of the quality of any merchandise kept or offered for sale. Concessionaire shall minimize the sale of any product which in the opinion of the Director will cause undue litter.

L. PRICES:

Concessionaire shall at all times maintain a complete list or schedule of the prices charged for all goods or services, or combination thereof, supplied to the public on or from the Concession premises. If the Concessionaire wants to increase the price of any item, the Concessionaire shall seek the prior approval of the Director. Said prices shall be fair and reasonable based upon the following considerations: that the concession is intended to serve the needs of the public for the goods and/or services supplied at a fair and reasonable cost; comparability with prices charged for similar goods and/or services supplied in the Los Angeles Metropolitan Area; and reasonableness of profit margin in view of the cost of providing same in compliance with the obligations assumed in this agreement.

The Concessionaire shall provide the City with an annual menu and price list to be presented within ten (10) days of the agreement's anniversary date. In the event the Director notifies Concessionaire that prices being charged are not fair and reasonable, Concessionaire shall have the right to confer with the Director and justify said prices. Following reasonable conference and consultation thereon, Concessionaire shall make such price adjustments as may be ordered by the Director.

Upon request of the Director, the Concessionaire shall provide the City with a menu and price list for any special event thirty (30) days before the date of the special event. In the event the Director notifies the Concessionaire that prices being charged are not fair and reasonable, Concessionaire shall have the right to confer with the Director and justify said prices. Following reasonable conference and consultation

thereon, Concessionaire shall make such price adjustments as may be ordered by the Director.

M. MAINTENANCE OF EQUIPMENT:

Concessionaire shall provide all maintenance, repair, and service required on all Concessionaire's equipment used in the concession. whether Concessionaire or City owned, insofar as sanitation and appearance of the concession is involved, the Director may direct Concessionaire to perform necessary repairs and maintenance to Concessionaire or City owned equipment. In the event City owned equipment needs repair, the Concessionaire must report the problem(s), at once, to the City Representative to have fixed. The City will fix the problem by hiring a City Contractor. If damage was caused by Concessionaire's negligence, the Concessionaire will pay the costs of repairs directly to the City's Contractor.

N. MAINTENANCE OF PREMISES:

Concessionaire shall be responsible for maintenance and repair of the premises. Concessionaire's duties shall include all sweeping, washing, servicing, repairing, replacing, and cleaning that may be required to properly maintain the premises in a safe, clean, wholesome, sanitary, orderly and attractive condition. Concessionaire shall also keep premises in a safe, clean, wholesome, sanitary, orderly and attractive condition.

The Director may direct that certain maintenance or repairs be performed where such work is necessary to protect the premises or to provide clean, attractive and well-maintained premises.

O. UTILITIES:

The City shall pay all utility charges for electricity and water necessary to carry on the operations of the Concessionaire. Concessionaire waives any and all claims against the City for compensation for loss or damage caused by a defect, deficiency or impairment of any utility system, water system, water supply system, drainage system, waste system, heating or gas system, electrical apparatus or wires serving the concession premises.

P. SAFETY:

Concessionaire shall immediately correct any unsafe condition of the concession premises, as well as any unsafe practices occurring thereon. Concessionaire shall obtain emergency medical care for any member of the public who is in need thereof, because of illness or injury occurring on the concession premises. Concessionaire shall cooperate fully with City in the investigation of any accidental injury or death occurring on the concession premises, including a prompt report thereof to the Director.

V. TERM:

The term of the AGREEMENT shall be for a period of up to eighteen months, commencing upon the occupation of the Catering Truck.

VI. PAYMENT:

Concessionaire agrees to pay to City, as consideration for the grant of the concession privileges provided for in this Agreement, once the annual income meets or exceeds the sum of \$250,000 a percentage of the past month's receipts as indicated below in the specified categories of 10% (ten percent) of the gross receipts from all food and refreshment sales and 12% (twelve percent) of all alcohol sales. This includes refresher cart sales. Such payment shall be due on the 15th of each month.

The term "gross receipts" is defined to mean the total amount of all sales of food and refreshments and the total amount received for the performance of any act of service (whether or not such act of service is done as a part of or in connection with the sale of food and refreshments, goods, wares, or merchandise), for which a charge is made or credit is allowed, including all receipts, cash credits, and property of any kind or nature. However, gross receipts does not include that amount of cash discounts allowed or taken on sales, nor that amount of any sales or use tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser by Concessionaire.

VII. BUSINESS RECORDS:

Concessionaire shall be required to maintain a method of accounting of all the receipts and disbursements in connection with the subject concession which shall correctly and accurately show the gross receipts and disbursements received or made by Concessionaire from the operation of said concession. The method of accounting, including bank accounts, established for the subject concession shall be separate from the accounting system used for any other business operated by Concessionaire or for recording Concessionaire's personal financial affairs. Such records will be reviewed with the Director as provided for in Article VI-Payments.

Concessionaire shall obtain and install a cash register(s) on which he shall record all gross sales. The cash register shall be non-resettable and sufficient to supply an accurate recording of all sales on tape. Concessionaire shall not purchase or install the cash register before obtaining the Director's approval of the specific register to be purchased. All cash registers shall have a sales counter which is visible to the public.

All documents, books and accounting records shall be open for inspection and re-inspection at any reasonable time during the term of this agreement and for twelve (12) months thereafter. In addition, the City, may from time to time conduct an audit and re-audit of the books and business conducted by Concessionaire and observe the operation of the business so that accuracy of the above records can be confirmed. If the report of gross sales made by Concessionaire to the City should be found to be less than the amount of gross sales disclosed by such audit and observation, Concessionaire shall pay the delinquent amount within thirty (30) days of billing therefore. If the additional amount due exceeds two percent (2%), and there is no reasonable basis for the failure to report and pay thereon, Concessionaire shall also pay the cost of the audit. All information obtained in connection with the City's inspection of records or audit shall be treated as confidential information and exempt from public disclosure thereof, except as otherwise required or authorized by applicable State or Federal laws.

Concessionaire shall furnish the City with a monthly gross receipts report showing the amount payable there from to the City. Such a report shall accompany each monthly payment required to be made as provided herein. The monthly reporting period shall be by calendar month, rather than monthly anniversary date of the effective date of the concession agreement. In addition thereto, Concessionaire shall furnish the City with an annual reviewed financial statement (which shall include an income statement, balance sheet and notes to the financial statements) prepared by a Certified Public Accountant and in a form acceptable to the City. The annual financial statements shall be submitted within sixty (60) days of the close of an agreement year or in a time frame agreed to by the City. The City reserves the right to request revenue statements or certified audit statements.

VIII. LIABILITY:

A. HOLD HARMLESS:

The Concessionaire agrees to defend, indemnify and hold the City, its officers, agents and employees, free and harmless from every claim, demand, damage or action, and any cost or expense in connection therewith, that may arise in any manner out of

the operation of said concession and the properties, equipment and facilities utilized in connection therewith.

The Concessionaire hereby expressly waives any and all claims for compensation for any and all loss or damage sustained by reason of any defect, deficiency or impairment of the water supply system, drainage or heating systems, gas mains, electrical apparatus or wiring furnished for the premises covered by this Agreement which may occur from time to time from any cause or for any loss resulting from fire, earthquake, flood, storms, war, insurrection, riot, public disorder or casualty; or from construction and/or maintenance activities authorized by the City; and the Concessionaire hereby expressly releases and discharges the City and its officers, agent and employees from any and all demands, claims, actions and causes of action arising from any of the aforesaid causes.

Further, Concessionaire waives and releases the City from any liability for any damages including but not limited to business loss or interruption which may occur as a result of any capital improvements, maintenance, or repairs to either the premises as shown on Exhibit A or to the DeBell Golf Course. Concessionaire agrees to defend, indemnify and hold the City, its officers, agents and employees, free and harmless from every claim, demand damage or action, and any cost or expense that may result from capital improvements, maintenance, or repairs to either the premises as shown on Exhibit A or the DeBell Golf Course

B. INSURANCE:

1. Mandatory Insurance: Concessionaire shall maintain the following insurance coverage throughout the term of this Agreement, and upon request Concessionaire shall show City evidence of such coverage:
2. Automobile Insurance: If Concessionaire uses, or intends to use a personal automobile in the performance of this Agreement, automobile liability insurance with limits of not less than \$100,000.00 per person and \$300,000.00 per accident for bodily injury and not less than \$25,000.00 per accident for property damage.
3. Workers' Compensation Insurance: Worker's Compensation Insurance and Employer's Liability Insurance on any employees of Concessionaire performing services under this Agreement.
4. General Liability and Property Damage Insurance: Concessionaire shall maintain general liability insurance and property damage insurance in the amount of \$1,000,000.00 combined single limit. The City and Luis Lara, dba Command Performance, shall be named as an additional insured on a separate endorsement, in a form approved by the City Attorney, to the insurance policy. The endorsement shall require the insurance company to provide City a minimum of ten (10) days notice of the cancellation of the policy. The policy shall cover all operations of Concessionaire pursuant to the terms of this Agreement. The policy shall specify that such insurance is the primary insurance. The policy shall be issued by an insurance company that is admitted to do business in the State of California.
5. Recovery from Concessionaire's Insurance: Concessionaire agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, the Concessionaire shall look solely to its insurance for recovery.
6. Self-Insured Retention: The insurance policies acquired by Concessionaire shall not require payment of any self-insured retention by Concessionaire as a condition precedent to the City's coverage or

payment for loss otherwise covered under the required liability insurance herein.

7. Additional Insured: The naming of the City as additional insured shall not affect any recovery to which the City would be entitled under this policy if not named as an additional insured and the City shall not be held liable for any premium or expense of any nature on this policy or any extension thereof. Any other insurance held by the City shall not be required to contribute toward any loss or expense covered by the insurance provided by this policy. Proceeds from any policy or policies shall be payable to the City primarily, and to the Concessionaire secondarily, if necessary.
8. Evidence of Insurance: Concessionaire shall furnish Certificates of Insurance, including separate endorsement, evidencing the required coverages (or the original of the insurance policies) for review by the Director and approved by the City Attorney's office no less than thirty (30) days prior to beginning performance under this Agreement.

C. DAMAGE AND THEFT:

The Concessionaire may insure the equipment, materials and work to cover Concessionaire's interest in the same from time to time as required. The City will not, under any circumstances, be answerable or accountable for any loss or damage that may happen to said equipment, materials and work, or any part or parts thereof, used and employed in fully executing the term of the Concession Agreement.

D. BLANKET INSURANCE POLICIES:

Blanket insurance policies carried by the Concessionaire may be substituted for specific policies upon approval by the City.

IX. FAITHFUL PERFORMANCE BOND:

Concessionaire shall provide a Faithful Performance Bond in the amount of \$20,000 within ten (10) calendar days after written notification of the award of the concession has been mailed by City. The City shall not execute the Concession Agreement and Concessionaire may not begin operations on the licensed premises until said bond has been received and approved. In the event the Concessionaire defaults in the performance of any of the terms of the Concession agreement, the sum guaranteed by said bond shall be available to reimburse City for any costs, as determined by the Parks and Recreation Director, occasioned by reason of said default. The form of said bond shall be such that City may proceed against Concessionaire and Concessionaire's surety immediately upon any default in the performance of the Concession Agreement. A Certificate of Deposit in a form acceptable to the City Attorney may be substituted for the bond.

X. DEFAULT:

In the event Concessionaire defaults in the performance of any of the terms or conditions of the Concession Agreement, or fails to conform to the rules and regulations, or any of the directions or instructions that may be properly made by City in the exercise of its powers, or fails, neglects or refuses to pay the consideration of any part thereof within thirty (30) days after the same shall become due, or becomes unable through personal incapacity to fulfill its obligations under the License Agreement, or defaults in the performance of any of the other terms of provisions therein required, City shall have the following options without any further notice or authorization from Concessionaire, and its choice of any option shall in no way waive its rights to select any other option at any time.

- A. City may give Concessionaire notice of such default. If the Concessionaire does not cure said default within thirty (30) days after it was first discovered (forthwith for a default involving sanitary conditions) or make reasonable progress to cure said default, City may terminate the Concession Agreement, assume the

operation of the concession, and exclude Concessionaire from the premises; and/or,

- B. City may retain any of Concessionaire's money in its possession and any of Concessionaire's property on the premises and apply the same to the payment of any and all claims which may be due City, and/or,
- C. City may recover at law any and all claims which may be due City; and/or,
- D. City may perform such work as it deems necessary to cure said default and charge Concessionaire for the full cost of labor and materials expended, plus 45 percent of said cost for administrative overhead. The Director may exercise this option immediately in the event of a default involving abandonment (Item XII), cleanliness provisions (Item IV-A), or safety provisions (Item IV-P). The Director may exercise this option within ten (10) days after giving Concessionaire written notice of a default involving equipment maintenance provisions (Item IV-M) or premises maintenance provisions (Item IV-N).

The acceptance of all or part of a concession fee payment by City for any period after a default shall not be deemed a waiver of any of these options, nor a waiver of the default of any subsequent default of the same or any other term, covenant and condition. Any waiver by City of a default on the part of the Concessionaire shall not be construed as, or constitute a waiver of, any subsequent default of the same or any other term, covenant and condition.

In the event City defaults in the performance of any of the terms or conditions of the Concession Agreement, and if a written notice of such default is issued to City by Concessionaire by registered mail, and if City does not cure said default within thirty (30) days of receipt of said notice, then Concessionaire may immediately terminate the Concession Agreement, and recover at law any and all claims which may be due. However, if Concessionaire fails to notify City of its default within sixty (60) days after learning of its occurrence, then Concessionaire has automatically waived any and all of its rights occurring hereunder.

XI. REGULATIONS, INSPECTION, AND DIRECTIVES:

A. DEPARTMENT RULES:

Concessionaire and concession employees shall at all times abide by all rules and regulations heretofore adopted or that may hereafter be adopted by the Director and cooperate fully with, Recreation and Community Services Department employees and agents in the performance of their duties. The Director is specifically designated a City agent and is employed by City to conduct inspections of the concession premises, evaluate Concessionaire and inform the Director fully as to Concessionaires conduct of the concession.

B. LAWS AND ORDINANCES:

Concessionaire shall conduct its business in accordance with all laws, ordinances, rules and regulations applicable to such business as set forth by the City, County, State and the Federal Government. **City reserves the right to terminate this agreement on 24 hours notice if State and Local health and safety requirements are not maintained and the concession is ordered closed by any agency having jurisdiction to do so at all times.** In the event any charges or complaints are filed against the Concessionaire alleging any violation of any of the foregoing, Concessionaire shall immediately notify City.

C. PERMISSIONS:

Any permission required by the Concession agreement shall be secured in writing by Concessionaire from the Director and any errors or omissions therefrom shall not relieve Concessionaire of its obligations to faithfully perform the conditions therein. Concessionaire shall immediately comply with any written request or order submitted to him by the Director.

D. RIGHT OF INSPECTION:

The Director shall have the right to enter upon the concession premises at any and all reasonable times for the purpose of inspection and observation of Concessionaire operations. During these inspections, they shall have the right to utilize photographic devices and other instruments for recording conditions and events taking place upon licensed premises. Said inspections may be made by persons identified to Concessionaire as City employees, or may be made by independent contractors engaged by City. Inspections may be made for the purposes set forth below; however, the enumerations below shall not be construed to limit City's right of inspection for any purpose incidental to the rights of City:

1. To determine if the terms and conditions of the Concession Agreement are being complied with.
2. To observe transactions between Concessionaire and patrons in order to evaluate the quality and quantities of food or drinks or other items sold or dispensed, the courtesy extended to and method of dealing with the public, the performance and caliber of Concessionaire's employees, and the methods for recording receipts.

The information gathered on these inspections will be used to evaluate Concessionaire in order to provide a basis for an action by City for the renewal or denial of renewal of concession.

E. CONTROL OF PREMISES:

City shall have absolute and full control of the premises and all its appurtenances during the term of the Concession Agreement and may make such changes and alterations therein, and in the grounds surrounding same, as may be determined by said City.

F. MEETINGS:

The Director and the Concessionaire shall hold meetings at a time and place to be determined by the Director. These meetings will be used to discuss matters of common concern between the parties and other issues important to the operation of the concession.

XII. ABANDONMENT OF CONCESSION OPERATIONS:

In the event of an abandonment, vacation or discontinuance of concession operations for a period in excess of forty-eight (48) hours, Concessionaire hereby irrevocably appoints City as an agent for continuing operation of the concession granted herein, and in connection therewith authorizes the officers and employees thereof to (1) take possession of the concession premises, including all improvements, equipment and inventory thereon; (2) remove any and all persons or property on said premises and place any such property in storage for the account of and at the expense of Concessionaire; (3) sublease or license the premises; and (4) after payment of all expenses of such subleasing or licensing apply all payments realized therefrom to the satisfaction and/or mitigation of all damages arising from Concessionaire's breach of this agreement. Entry by the officers and employees of City upon the concession premises for the purpose of exercising the authority conferred upon as agent of Concessionaire

shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this concession.

XIII. SURRENDER:

Upon termination of this Agreement the Concessionaire shall surrender said premises, in good condition and repair and free and clear of all liens and encumbrances.

XIV. ASSIGNMENT, SUBLEASE, BANKRUPTCY:

Concessionaire shall not, without the prior written consent of the Director assign, hypothecate, or mortgage this agreement or sublease or license any portion of the concession premises. Any attempted assignment, hypothecation, mortgage, sublease or license without said written consent of the Director shall render this agreement null and void.

Each and all of the provisions, agreements, terms, covenants and conditions herein contained to be performed by Concessionaire shall be binding upon any transferee thereof.

The Concession shall not be transferable by testamentary disposition or the State laws of interstate succession, as the rights, privileges and use conferred by this agreement shall terminate prior to the date for expiration thereof in the event of the death of Concessionaire occurring within the term herein provided. Additionally, neither this agreement nor any interest therein shall be transferable in proceedings in attachment or execution against Concessionaire, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Concessionaire, or by any process of law including proceedings under Chapter XI, XII or XIII of the Bankruptcy Act.

Shareholders and/or partners of Concessionaire may transfer, sell, exchange, assign or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment or divestment is effected in such a way as to give majority control of Concessionaire to any person, corporation, partnership or legal entity other than the majority controlling interest therein at the time of the execution of this agreement, approval thereof shall be required. Consent to any such transfer shall only be refused if the Director finds that the transferee is lacking in experience and/or financial ability to conduct the concession.

The prohibition herein contained shall not be applicable with respect to transfers of this agreement arising from the exercise of a power of sale or judicial foreclosure pursuant to the terms and conditions of a hypothecation or mortgage previously approved by the Director.

XV. NOTICES:

Any notices required to be given under the terms of this concession agreement or any law applicable thereto may be placed in a sealed envelope, with postage paid, addressed to the person on whom it is to be served, and deposited in a post office, mailbox, sub-post office, substation or mail chute, or other facility regularly maintained by the United States Postal Service. The address to be used for any notice served by mail upon:

THE CONCESSIONAIRE:

Vendor Name
Raymond and Michele Lucero
1500 Walnut
Burbank, CA

or such other place as may hereinafter be designated in writing to the Director by Concessionaire.

Any notice served by mail upon City shall be addressed to:

THE CITY:

City Clerk
P.O. Box 6459
Burbank, California 91510

or such other place as may hereinafter be designated in writing to Concessionaire by the Director with copies thereof to:

COPIES TO:

PARKS, RECREATION AND COMMUNITY DIRECTOR
P.O. Box 6459
Burbank, California 91510

Service by mail shall be denied complete upon deposit in the above mentioned manner.

XVI. ENTIRE AGREEMENT:

This document, and the exhibit attached hereto, constitutes the entire agreement between the City and Concessionaire for the concession and use granted herein. All other agreements, promises and representations with respect thereto, other than contained herein, are expressly revoked, as it has been the intention of the parties to provide for a complete integration within the provisions of this document, and the exhibit attached hereto, the terms, conditions, promises and covenants relating to the concession and the premises to be used in the conduct thereof. The unenforceability, invalidity, or illegality of any provision of this agreement shall not render the other provisions thereof unenforceable, invalid or illegal.

This document may be modified only by further written agreement between the parties hereto. Any such modification shall not be effective unless and until executed by Concessionaire and in the case of the City until approved by the Director.

IN WITNESS WHEREOF, three (3) copies of this Agreement have been executed by the parties hereto, each of which shall, for all purposes, be deemed an original.

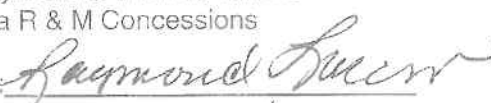

"CITY"

CITY OF BURBANK, a municipal corporation,


By: 
Eric Hansen
Parks, Recreation and Community
Services Director

"CONCESSIONAIRE"

VENDOR NAME
Raymond & Michele Lucero
dba R & M Concessions

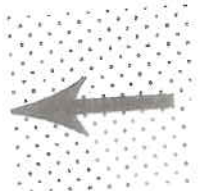
By: 


APPROVED AS TO FORM:
City Attorney's Office

By: 
Terry B. Stevenson
Senior Assistant City Attorney

Attest:


Margarita Campos, CMC
City Clerk



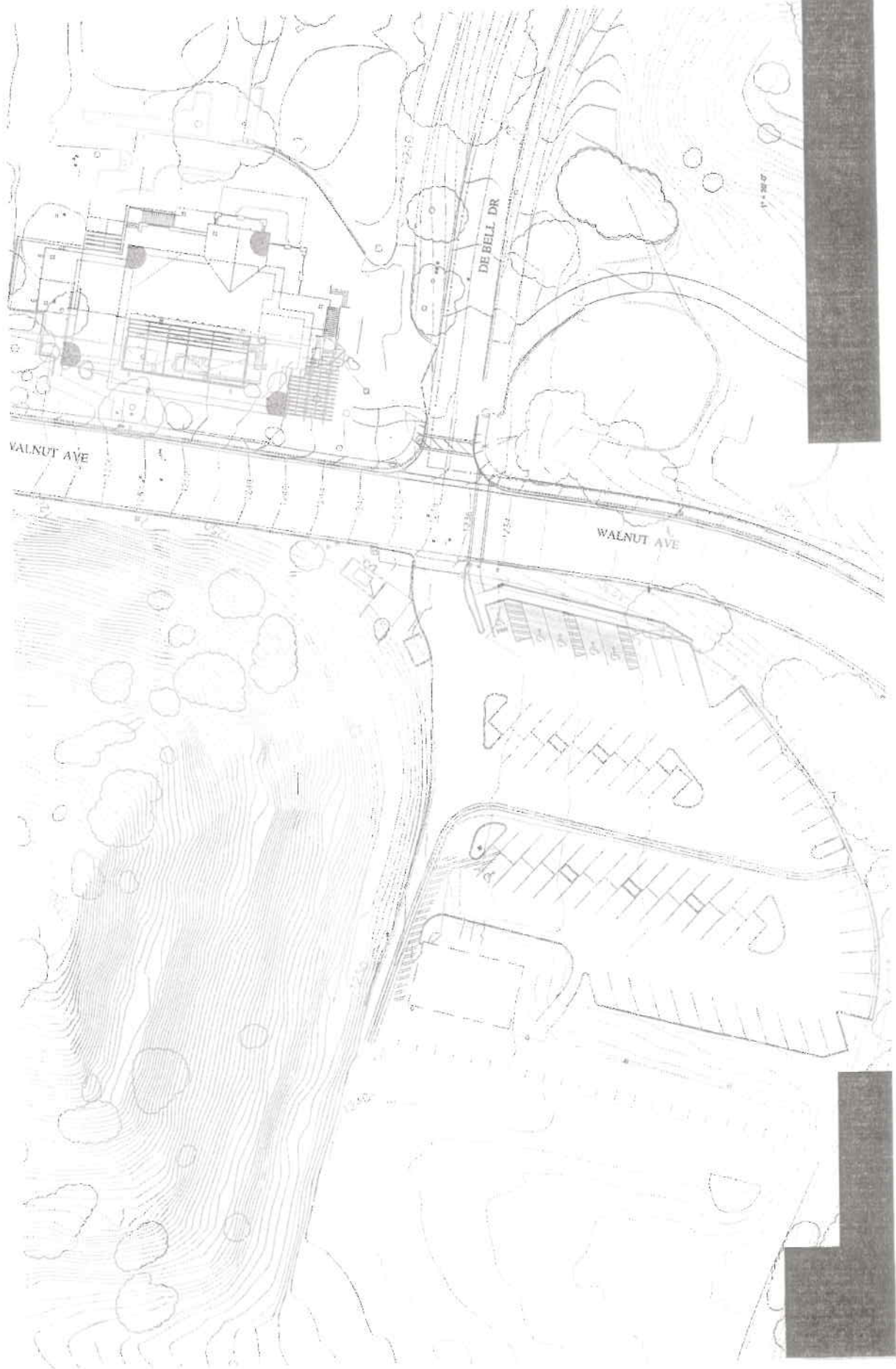


EXHIBIT A.